

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY P. TAYLOR and DEPARTMENT OF STATE, INTERNATIONAL
COMMUNICATIONS AGENCY, Washington, DC

*Docket No. 01-51; Submitted on the Record;
Issued August 1, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective September 27, 1999.

On September 30, 1980 appellant, then a 37-year-old writer and editor, was pulling a heavy desk chair up to her desk when the chair caught on the carpet. She developed back pain and noted that she was unable to stand for 30 to 45 minutes. The Office accepted appellant's claim for lumbosacral pain. Appellant returned to work on December 17, 1980 and received compensation for intermittent periods of disability until February 11, 1983 when she resigned from the employing establishment. The Office subsequently paid total disability compensation.

In a September 27, 1999 decision, the Office terminated appellant's compensation on the grounds that the weight of the medical evidence of record showed that appellant was no longer disabled due to the September 30, 1980 employment injury.

In a December 27, 1999 letter, appellant requested reconsideration. In a January 12, 2000 decision, the Office denied appellant's request for reconsideration as insufficient to warrant a merit review of the September 27, 1999 decision.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹

¹ Jason C. Armstrong, 40 ECAB 907 (1989).

In a September 8, 1980 report, Dr. Bryan J. Arling, a Board-certified internist, stated that appellant had persistent back pain since lifting a heavy typewriter at work in October 1979.² Dr. Arling commented that, while all of appellant's objective studies had been negative, her pain and disability were real and incapacitating. He noted that appellant had been in therapy for the emotional aspects of her problem and he was encouraging her to consider enrolling in a pain clinic. Dr. Arling indicated that there were a number of soft tissue inflammatory states, which can cause significant discomfort for which there were no objective signs.

In an August 19, 1988 report, Dr. William T. Skinner, a psychiatrist, stated that a myelogram showed a bulge at L5-S1. Dr. Skinner diagnosed chronic benign pain syndrome and major depression with melancholy.

The Office referred appellant to Dr. Benzel MacMaster, a Board-certified orthopedic surgeon, for an examination and second opinion. In an August 2, 1995 report, Dr. MacMaster noted that appellant's examination was nonfocal and nondiagnostic. He commented that whether appellant had any genuine physiologic back pain was conjectural. Dr. MacMaster found nothing to suggest appellant had neither any type of neurological loss nor any progressive loss. He concluded that, from a functional standpoint, appellant had nothing in her lumbar spine that would prevent her from seeking and keeping some type of employment. Dr. MacMaster stated that the limiting factor was appellant's emotional and mental condition. He indicated that appellant did not need any ongoing care for her lower back and had not had any care for four and half years. Dr. MacMaster noted appellant had failed at all type of remedial programs and concluded that continued treatment would be of no benefit whatsoever in getting appellant back to work.

The Office also referred appellant to Dr. William T. Moore, a Board-certified psychiatrist, for a psychiatric examination. In an undated report, received by the Office on August 30, 1995, Dr. Moore diagnosed major depression with psychosis and borderline personality disorder. He stated that appellant was disabled for work due to her emotional condition. Dr. Moore indicated that appellant had psychological problems as a result of her employment injury, including tremendous fear of rejection, strong feeling of expectation of being rejected, anger at feelings of helplessness, and great pain associated with her physical injuries which tended to be enhanced by the conflicts associated with work and with her efforts to get some kind of relief of a total nature. He indicated that appellant apparently had received some apparent minor physical injuries which had been created to be significant injuries to her, gradually evolving into significant pathophysiological processes. Dr. Moore attributed her condition to her borderline personality disorder in which she would demand a great deal of attention and care and yet would be highly rejective of those attempting to give care. He commented that appellant had been quite successful in creating an independent existence for herself but it began to fall apart in 1978.

The Office referred appellant to Dr. John H. Peloza, a Board-certified orthopedic surgeon, for an examination. In an April 19, 1999 report, Dr. Peloza indicated that appellant had pain in the lumbosacral area, which radiated into the lateral and posterior aspect of her thigh to

² The record indicates that appellant sustained employment injuries on October 23, 1979, while lifting a typewriter and on March 1, 1982, when she fell down stairs. Both claims were accepted for lumbosacral strains.

the knee. He noted that appellant had been examined by Dr. Skinner, an associate, in 1991 and the examination at that time was nondiagnostic. Dr. Pelozo reported that appellant's symptoms had not changed since that time. He stated that there were no objective findings for a lumbar strain. Dr. Pelozo indicated that a strain or sprain do not create the chronic pain problems that had been going on for 19 years. He noted that appellant might have degenerative disc disease and some chronic low back pain but not a lumbar strain. Dr. Pelozo found no objective signs of a lumbar strain. He stated that appellant's pain and emotional problems might stem from her initial work injury but, because of her emotional problems and psychiatric disturbance, a minor injury had been blown completely out of proportion to give her 19 years of back pain. Dr. Pelozo indicated that appellant would not return to work and he would not support her medical disability. He stated that appellant was not disabled due solely to her work-related injury. Dr. Pelozo concluded that it was mainly the psychiatric and emotional disturbances that caused appellant to be in such pain and physical disability.

Both Drs. MacMaster and Pelozo indicated that appellant had no objective symptoms from the September 30, 1980 employment injury. Both physicians concluded that appellant was physically capable of working. Dr. Pelozo stated specifically that the effects of the accepted lumbosacral strain had ceased by the time of his examination.

While Dr. Pelozo attributed appellant's emotional and psychiatric condition to the employment injury, Dr. Moore indicated that appellant's disability was due to a borderline personality disorder, a preexisting condition. Dr. Moore is a psychiatrist. Thus, his opinion on appellant's mental condition carries more weight than Dr. Pelozo's opinion as an orthopedic surgeon commenting on a psychiatric condition. The weight of the medical evidence, therefore, establishes that appellant's disability for work was no longer causally related to her employment injury.

The decisions of the Office of Workers' Compensation Programs dated January 12, 2000 and September 27, 1999 are hereby affirmed.

Dated, Washington, DC
August 1, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member